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ELECTRONIC THESIS AND DISSERTATION UNSYIAH

TITLE

THE ENFORCEMENT OF CANING PUNISHMENT IN ACEH BASED ON INTERNATIONAL LAW AND INDONESIAN LAW

ABSTRACT

Indonesia is state party and has ratified International Covenant on Civil And Political Rights (ICCPR) and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) under Law No. 12 of 2005 on Ratification of the International Covenant on Civil and Political Rights and Law No. 5 of 1998 on Ratification Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Both the convention would have the legal binding. Article 7 ICCPR state that, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. The implementation of caning punishment in Aceh regarded as contrary to both of the convention. Besides that caning punishment is also unknown in article 10 of the Indonesia Penal Code.

The purpose of writing this thesis is to review and describe about is the implementation of caning punishment in Aceh contrary to international law and also does the implementation of caning punishment in Aceh contradict with the legal system hierarchy of Indonesia.

The methodology applied is library research which are processed systematically to attain appropriate depiction with research problems. Normative research is obtained by the library including law books, law journals and law papers.

The results of this research indicate that caning punishment in Aceh doesâ€™t contrary with international law. Although caning may cause pain and suffering but caning is lawful sanction in Aceh. This is because, article 1 CAT mentioned the exception does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Therefore caning in Aceh is not categorized as torture and cruel, inhuman or degrading treatment or punishment. The implementation of caning punishment in Aceh also have the procedure and safeguard in the execution and based on international standards, this is to fulfill the protection on human rights. The implementation of caning punishment in Aceh is an elaboration of article 241 paragraph (4) Law No. 11 of 2006 on the Governing of Aceh. Hence, there is no contradiction between caning in Aceh with the laws thereon.

Related to the execution of caning punishment in Aceh, the prosecutor should pay attention to the readiness (training) of the executioner before execution, so that there is no errors in the execution of caning punishment and Qanun 7 of 2013 on Jinayat Procedure should be amended and put the type and size (diameter, length etc) of the cane.